

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID NAIL,

Plaintiff,

Case No. 1:14-CV-459

v.

HON. ROBERT HOLMES BELL

ELLEN CARMODY and
JANET NEFF,

Defendants.

**MEMORANDUM OPINION AND ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This is a civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff claims Defendants violated his Fourteenth Amendment rights in their adjudication of his related case, *Nail v. Myers*, No. 1:12-cv-1345. The matter was referred to Magistrate Judge Timothy P. Greeley, who issued a Report and Recommendation (R&R), recommending that this Court dismiss the matter as frivolous under 28 U.S.C. § 1915(e)(2), because Defendants are absolutely immune from actions taken in their judicial capacity. The matter is presently before the Court on Defendant's objections to the R&R. In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R&R to which objections have been made. The Court overrules the objections and issues this Memorandum Opinion and Order.

“[A] general objection to a magistrate's report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.”

Miller v. Currie, 50 F.3d 373, 380 (6th Cir. 1995). The Court may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. *Id.*; 28 U.S.C. § 636(b)(1).

Plaintiff's objections are fairly general, including long blocks of text arguing the merits of his related case. He does, however, argue that the Magistrate Judge improperly determined that Defendants are not acting in the absence of all jurisdiction, an exception to their absolute judicial immunity. In support of his claim that Defendants lack jurisdiction, Plaintiff merely states his disagreement with Defendants' adjudication of his case, but fails to point out any evidence that Defendants are personally biased against him. Such disagreement, even stated in a sworn affidavit, is insufficient to deprive Defendants of jurisdiction over Plaintiff's related case. *See Ullmo ex rel. Ullmo v. Gilmour Acad.*, 273 F.3d 671, 681 (6th Cir. 2001). The Magistrate Judge correctly determined that Defendants enjoy absolute immunity from suit and that Plaintiff's complaint should therefore be dismissed.

Although the Court adopts the conclusion of the R&R, it does so under different authority. This case was not filed in forma pauperis, and therefore sua sponte dismissal under § 1915(e)(2) is improper. *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999). Nevertheless, the Court may dismiss a complaint sua sponte for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), even when the filing fee has been paid, if "the allegations of [the] complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Id.* Here, as discussed above, Plaintiff's claims are devoid of merit because Defendants are absolutely immune from suit for their judicial actions.

The Court will issue a Judgment consistent with this Opinion and Order. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Objections (ECF No. 9) are **OVERRULED**.

IT IS FURTHER ORDERED that the Magistrate Judge's R&R (ECF No. 5), as modified by this Order, is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Complaint (ECF No. 1) is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff's Non-Dispositive Motion for Ex Parte Injunctive Relief (ECF No. 4) and Application for Default Judgment (ECF No. 7) are **DENIED** as **MOOT**.

Dated: September 2, 2014

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE